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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,484	04/12/2004	Joseph M. Asher	069547.0157	3028
5073	7590	06/05/2007	EXAMINER	
BAKER BOTTS L.L.P.			COLBERT, ELLA	
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SUITE 600			ART UNIT	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/822,484	ASHER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ella Colbert	3694	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1-47 are pending. Claims 1, 6, 9, 25, 26, 36, and 41 have been amended in this communication filed 02/28/07 entered as Response After Non-Final or new or Additional Drawings filed.
2. The objection to the Title of the invention still remains as set forth here below.
3. The objection to the Specification has been overcome by Applicants' amendment to the Specification and is hereby withdrawn.
4. The Applicants' amendment to drawing figure 2 and the amendments to Applicants' Specification have overcome the drawing objections and the drawing objections are hereby withdrawn.
5. The Applicants' amendment to claims 6, 9, 25, 26, 29, 36, and 41 have been overcome by the amendments to claims 6, 9, 25, 26, 36, and 41 and are hereby withdrawn.
6. The 35 USC 112 second paragraph rejections for claim 1 for the lack of antecedent basis is hereby withdrawn in view of Applicants' amendment. The 35 USC 112 second paragraph rejection for claims 1-47 as omitting essential steps has been overcome by Applicants' convincing arguments and are hereby withdrawn.

### ***Title Objection***

7. The title of the invention is objected to because there are only method claims in the application. The title should be changed to "A LOTTERY AND AUCTION BASED TOURNAMENT ENTRY EXCHANGE PLATFORM" OR "A METHOD FOR A LOTTERY AND AUCTION BASED TOURNAMENT ENTRY EXCHANGE PLATFORM".

***Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 2002/0082969 A1) O'Keeffe et al, hereafter O'Keeffe in view of (US 6,260,024) Shakedy and further in view of (US 6,067,532) Gebb.

Claim 1. Gebb teaches, A computer-implemented method performed using a computer system for conducting an exchange of an activity entry between a buyer and a seller the computer system comprising one or more processing units and one or more memory units, the method comprising: determining a first set of entries in an activity, at least one entry to be determined a winning entry based on an occurrence of an event associated with the activity (col. 2, lines 29-50 –(one activity –the consignment of tickets); using the computer executing a first initial distribution of the first set of entries (col. 2, lines 51-62); and using the computer system, conducting trading, of at least one of the entries, between at least one buyer and at least one seller (col. 3, lines 20-42).

Claim 2. Gebb teaches, The method of claim 1, wherein the step of conducting trading comprises: receiving, from a first user, at least one buy request associated with at least one entry of the first set of entries (col. 5, lines 15-65); receiving, from a second user, at least one sell request associated with the at least one entry of the first set of entries (col. 6, lines 3-63); matching the at least one buy request with the at least one sell request (col. 8, line 3-29); and transferring the at least one entry of the first set of entries from the second user to the first user (col. 8, lines 30-67).

Claim 3. Gebb teaches, The method of claim 1, wherein the step of conducting trading comprises: receiving, from a first user, a buy order associated with at least one entry of the first set of entries (col. 6, line 64-col. 7, line 13); receiving, from a second

Art Unit: 3694

user, a short sale order associated with the at least one entry of the first set of entries (col. 6, lines 40-63); matching the buy order with the at least one short sale order to create a short sale (col. 6, line 64-col. 7, line 13 and lines 42-52); settling, at a predetermined time, the short sale (col. 8, line 3-29).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 4-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 2002/0082969 A1) O'Keeffe et al, hereafter O'Keeffe and (US 6,260,024) Shakedy in view of (US 6,067,532) Gebb

Claim 4. O'Keeffe discloses, wherein executing a first initial distribution comprises conducting a lottery for the first set of entries (page 3, col. 2, paragraph [0034]-[0035].

Claim 5. O'Keeffe teaches, wherein executing a first initial distribution comprises conducting an auction for the first set of entries (page 3, col. 2, paragraph [0032]-[0033].

Claim 6. Gebb teaches, The method of claim 1, further comprising. Executing a second initial distribution of a second set of entries for the first activity and conducting

Art Unit: 3694

trading of at least one of the second set of entries (col. 6, lines 40-63 –second set of redistribution entries).

Claim 7. Gebb teaches, The method of claim 6, wherein the trading of entries of the first set of entries is discrete from the trading of entries of the second set of entries (col. 6, line 64-col. 7, line 13).

Claim 8. Gebb teaches, The method of claim 6, wherein the trading of entries of the first set of entries is commingled with the trading of the second set of entries (col. 7, lines 20-41).

Claim 9. Gebb teaches, The method of claim 1, further comprising: executing a second initial distribution of a second set of entries for a second activity and conducting trading of at least one of the second set of entries (col. 8, lines 12-43).

Claim 10. Gebb teaches, The method of claim 9, wherein the first activity is the same type of activity as the second activity (col. 8, lines 12-43).

Claim 11. The method of claim 9, wherein the first activity (col. 5, lines 25-65) is a different type of activity from the second activity (col. 8, lines 12-43).

Claim 12. this dependent claim is rejected for the similar rationale as given above for claim 7.

Claim 13. this dependent claim is rejected for the similar rationale as given above for claim 8.

Claim 14. O'Keeffe teaches, wherein the trading of the first set of entries comprises conducting an auction of at least one entry of the first set of entries (page 9, col. 1, paragraph [0101]).

Claim 15. O'Keeffe teaches, conducting the auction comprises receiving from a first user a request to auction at least one entry held by the first user, and receiving from a second user a first bid request for the at least one entry (page 3, col. 2, [0032]).

Claim 16. O'Keeffe teaches, receiving from a third user a second bid request higher than the first bid request and transferring the at least one entry to the third user (page 7, col. 1, paragraph [0072]-col. 2, line 9). Claim 17. O'Keefe failed to teach, The method of claim 1, wherein the activity is a sports activity. Gebb teaches, The method of claim 1, wherein the activity is a sports activity (col. 1, lines 31-38).

11. Claims 18-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 2002/0082969 A1) O'Keeffe et al, hereafter O'Keeffe in view of (US 6,067,532) Gebb as applied to claims 4-16 above, and further in view of (US 7,003,485) Young.

Claim 18. O'Keeffe and Gebb failed to teach, wherein the activity is an entertainment activity. Young teaches wherein the activity is an entertainment activity (col. 4, lines 10-18).

Claim 19. O'Keeffe and Gebb failed to teach, wherein the activity is a competition. Young teaches wherein the activity is a competition (col. 4, lines 19-32).

Claim 20. Gebb teaches, The method of claim 1, wherein the activity is a financial market activity (col. 2, lines 11-27).

Claim 21. O'Keefe and Gebb failed to teach, wherein the activity is a tournament. Young teaches, wherein the activity is a tournament (col. 4, line 17-Sports which is interpreted as a tournament). However, Gebb in col. 3, lines 20-42 does disclose sporting events which may include a tournament.



Claim 22. O'Keefe failed to teach wherein the activity is a single game. Gebb teaches, wherein the activity is a single game (col. 3, lines 20-34).

Claim 23. O'Keefe failed to teach wherein the activity is a basketball tournament. Gebb teaches, wherein the activity is a basketball tournament (col. 3, lines 34-42).

Claim 24. Gebb and O'Keefe failed to teach, The method of claim 1, wherein the activity is a political election. It would have been obvious to one having ordinary skill in the art at the time the invention was made that the activity is a political election and to modify in Gebb because such a modification would allow Gebb's system to support several different types of activities. It is well known by POSITA that a political election is considered an activity and something that can have tickets auctioned or a lottery for tickets to attend the political dinners, fundraisers, and the other political events surrounding the election.

Claim 25. O'Keefe teaches, The method of claim 1, further comprising: accepting payment for the entry from the first user (col.1, page 5, [0051]).

Claim 26. Gebb teaches, The method of claim 1, further comprising accepting confirmation of payment for the entry by the first user (col. 1, page 10 {0108}).

Claim 27. O'keefe failed to teach The method of claim 1, further comprising using the computer systems the step of distributing all or a portion of the entries in a single bundle to one or more users. Gebb teaches, The method of claim 1, further comprising using the computer systems the step of distributing all or a portion of the entries in a single bundle to one or more users (col. 6, line 64-col. 7, line 12).

Claim 28. O'Keefe failed to teach The method of claim 27, wherein the single bundle is distributed prior to conducting the after-market trading of the first set of entries. Gebb teaches, The method of claim 27, wherein the single bundle is distributed prior to conducting the after-market trading of the first set of entries (col. 8, lines 3-11).

Claim 29. O'Keefe failed to teach, The method of claim 27, wherein the single bundle is distributed after commencement of the after-market trading of the first set of entries. Gebb teaches, The method of claim 27, wherein the single bundle is distributed after commencement of the after-market trading of the first set of entries (col. 8, lines 12-43).

Claim 30. O'Keefe teaches, The method of claim 1, wherein conducting the trading comprises receiving a short sell order from a first user and a buy order from a second user (col. 1, page 9 [0101]).

Claim 31. O'Keefe teaches, The method of claim 1, wherein the trading comprises conducting at least one transfer of at least one entry (col. 2, page 9 [0105]).

Claim 32. O'Keefe failed to teach, The method of claim 1, wherein the trading comprises conducting at least one sale of at least one entry. Gebb teaches, The method of claim 1, wherein the trading comprises conducting at least one sale of at least one entry (col. 8, lines 44-62).

Claim 33. O'Keefe failed to teach, The method of claim 1, wherein the the trading comprises conducting at least one short sale. Gebb teaches, The method of claim 1, wherein the the trading comprises conducting at least one short sale (col. 7, line 53-col. 8, line 29 –interpreted as short sale).

Claim 34. O'Keeffe teaches, the after-market trading comprises at least one auction (page 3, col. 2, paragraph [0032]).

Claim 35. O'Keeffe teaches, wherein the auction comprises an auction in which a payout of a certain minimum amount at a certain time is guaranteed to be made to the holder of a winning entry (page 4, col. 1, paragraph [0040]-[0041]).

Claim 36. this dependent claim is rejected for the similar rationale as given above for claim 35.

Claim 37. O'keeffe teaches, wherein the payout is money (page 7, col. 2, paragraph [0078]-[0079]).

Claim 38. O'Keeffe failed to teach, The method of claim 36, wherein the payout is a non-cash prize. Gebb teaches, The method of claim 36, wherein the payout is a non-cash prize (col. 7, line 53-col. 8, line 11).

Claim 39. O'Keefe failed to teach, The method of claim 36, wherein the payout comprises at least a portion of fees paid for the first set of entries during the distributing step. Gebb teaches, The method of claim 36, wherein the payout comprises at least a portion of fees paid for the first set of entries during the distributing step (col. 7, line 53-col. 8, line 43).

Claim 40. O'Keeffe teaches, wherein the payout is based on an amount of revenues generated by the distributing step (page 7, col. 2, paragraph [0079]-[0080]).

Claim 41. O'Keefe failed to teach, The method of claim 1, further comprising: using the computer system the step of receiving a commission or fee for the transfer of at least one entry. Gebb teaches, The method of claim 1, further comprising: using the

computer system the step of receiving a commission or fee for the transfer of at least one entry (col. 7, line 53-col. 8, line 2).

Claim 42. O'Keefe failed to teach, The method of claim 1, wherein the trading begins as soon as at least one entry is distributed. Gebb teaches, The method of claim 1, wherein the trading begins as soon as at least one entry is distributed (col. 8, lines 12-22).

Claim 43. O'keefe failed to teach, The method of claim 1, wherein the trading begins after all of the entries are distributed. Gebb teaches, The method of claim 1, wherein the trading begins after all of the entries are distributed (col. 8, lines 22-43).

Claim 44. O'keefe failed to teach, The method of claim I, wherein the trading begins after a predetermined number of entries are distributed. Gebb teaches, The method of claim I, wherein the trading begins after a predetermined number of entries are distributed (col. 8, lines 44-67).

Claim 45. O'Keefe failed to teach, The method of claim 1, wherein the after-market trading is closed at a predetermined time. Gebb teaches, The method of claim 1, wherein the after-market trading is closed at a predetermined time (col. 8, lines 16-29).

Claim 46. O'keefe failed to teach, The method of claim 1, wherein the trading is closed before the start of the activity Gebb teaches, The method of claim 1, wherein the trading is closed before the start of the activity (col. 7, lines 14-65).

Claim 47. O'keefe failed to teach, The method of claim 1, wherein the trading is closed at the end of the activity. Gebb teaches, The method of claim 1, wherein the trading is closed at the end of the activity (col. 9, lines 1-24).

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Brown (US 5,794,219) disclosed an on-line auction.

Walker et al (US 6,240,396) disclosed a conditional purchase offer for event tickets.

### ***Inquiries***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 571-272-6741. The examiner can normally be reached on Monday, Wednesday, and Thursday, 5:30AM-3:00PM.

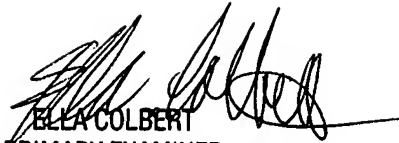
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/822,484  
Art Unit: 3694

Page 13

May 28, 2007

  
ELLA COLBERT  
PRIMARY EXAMINER